

3-19-08

DAC

JENKINS  
WILSON  
TAYLOR  
& HUNT

patent attorneys

March 18, 2008

"Express Mail" mailing number EM 104 549 524 USDate of Deposit March 18, 2008

I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail to Addressee" service under 37 C.F.R. 1.10 on the date indicated above and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Gayle W. Chaney  
Gayle W. Chaney

RICHARD E. JENKINS

JEFFREY L. WILSON

ARLES A. TAYLOR, JR.

GREGORY A. HUNT

BENTLEY J. OLIVE

CHRIS PERKINS, PH.D.

DAVID M. SIGMON

KIRBY A. TURNER

WESLEY A. SHEFFIELD

BENJAMIN J. AITKEN

K. JAY KLINCK

LAURA L. KIEFER, PH.D.

PATENT AGENTS

AMY ODENBAUGH, PH.D.

LEON LEGLEITER, PH.D.

\*LICENSED ONLY IN GA

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Re: U.S. Patent Application Serial No. 10/672,370 for  
MODIFICATION OF PERCUTANEOUS INTRAFOCAL  
PLATE SYSTEM  
Our Ref. No. 421/75/2

Sir:

Please find enclosed in connection with the subject U.S. patent application the following documents:

1. Request to Withdraw A Holding of Abandonment under 37 C.F.R. 1.181(a);
2. Exhibits A - D; and
3. A return-receipt postcard to be returned to us with the U.S. Patent and Trademark Office filing stamp thereon.

The Commissioner is hereby authorized to charge any fees associated with the filing of this correspondence to Deposit Account Number 50-0426.

Respectfully submitted,

JENKINS, WILSON, TAYLOR &amp; HUNT, P.A.

Richard E. Jenkins

Richard E. Jenkins

Registration No. 28,428

Customer No: 25297

REJ/gwc

Enclosures

tel 919.493.8000  
fax 919.419.0383

Jenkins, Wilson, Taylor & Hunt, P.A.  
JenkinsWilson.com

University Tower, Suite 1200 | 3100 Tower Boulevard | Durham, North Carolina 27707

"Express Mail" mailing number: EM 104 549 524 US  
Date of Deposit March 18, 2008  
I hereby certify that this correspondence is being deposited  
with the United States Postal Service "Express Mail Post  
Office to Addressee" service under 37 C.F.R. 1.10 on the date  
indicated above and is addressed to the Commissioner for  
Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Gayle W. Chaney  
Gayle W. Chaney

**PATENT**



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Dahners

Group Art Unit: 3733

Serial No.: 10/672,370

Examiner: Swiger, III, James L.

Filed: September 25, 2003

Docket No.: 421/75/2

Confirmation No.: 3033

For: MODIFICATION OF PERCUTANEOUS INTRAFOCAL PLATE SYSTEM

\*\*\*\*\*

REQUEST TO WITHDRAW A HOLDING OF ABANDONMENT  
BASED ON PATENT OFFICE ERROR

Attention: Office of Petitions  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

The above-identified application has become abandoned upon the contention by the United States Patent and Trademark Office (hereinafter the "Patent Office") that there was a failure to file a timely and proper reply to a notice or action. For the reasons set forth herein below, applicants hereby respectfully request that the Commissioner withdraw the holding of abandonment due to a Patent Office error under 37 C.F.R. 1.181(a).

*Facts Attested to by the Undersigned*

Applicants received a Notice of Abandonment for failure to timely file a proper reply to the Office Action dated July 13, 2007. A true and accurate copy of the Notice of Abandonment dated February 13, 2008 is attached. A true and accurate account of the facts regarding the filing of a timely response to a July 13, 2007 Office action with associated documentation is attested to by the undersigned, Richard E. Jenkins.

I, Richard E. Jenkins, attest that:

1. On January 14, 2008, an Amendment C and Terminal Disclaimer ("the Amendment") was filed in response to the Office Action dated July 13, 2007. (A copy of the Amendment C and Terminal Disclaimer as filed on January 14, 2008 in response to the Office Action dated July 13, 2007 is attached hereto as "**Exhibit A.**") Applicant included a return receipt postcard with the amendment.
2. The Amendment was mailed by Express Mail in accordance with United State Patent and Trademark Office guidelines. (A copy of the Express Mail mailing receipt number **EM 143 945 014 US** stamped by United States Postal Service showing mailing date of January 14, 2008 of the Amendment is attached as "**Exhibit B.**")
3. Based on United States Postal Service's track and confirm search results on its website, the Express Mail package corresponding to Express Mail mailing receipt number **EM 143 945 014 US** was delivered to the "Patent Office" in Alexandria, VA on January 15, 2008. The track and confirm search results show that an S. Dyar at the "Patent Office" signed for the package. (A copy of the track and confirm search results from the United States Postal Service website showing that the document was signed for by "S. Dyar" is attached as "**Exhibit C.**")
4. On January 17, 2008, The Offices of Jenkins, Wilson, Taylor, & Hunt, P.A. received the return receipt postcard that had the Amendment from the United States Patent and Trademark Office. (A copy of the return

receipt postcard stamped January 14, 2008 by OIPE showing receipt of the Amendment on January 14, 2008 is attached as "**Exhibit D**"); and

5. Based on the information provided above, I believe the holding of abandonment should be withdrawn due to United States Patent and Trademark Office error.

#### REMARKS

The accounting of the facts to which I am attesting and the accompanying documentation clearly establish that the Amendment C was filed in a timely manner on Monday, January 14, 2007 in response to the July 13, 2007 Office Action. Accordingly, applicants hereby request a withdrawal of the order of abandonment for the above-referenced patent application and further request prompt issuance of the patent.

Examiner Swiger is invited to contact the undersigned with any questions. Although it is believed that no fee is due, the Commissioner is hereby authorized to charge any fees associated with the filing of this correspondence to Deposit Account No. 50-0426.

Applicants respectfully submit that they have diligently pursued the prosecution of this application, and the holding of abandonment appears to be unwarranted given the representations of the Patent Office. Accordingly, applicants respectfully request that the holding of abandonment be withdrawn under 37 C.F.R. 1.181(a) and that the subject application be passed to allowance.

CONCLUSIONS

In light of the above petition and remarks, applicants respectfully submit that the application is in condition for allowance and courteously solicit a Notice of Allowance.

If any small matter should remain outstanding after the Commissioner or his representative has had an opportunity to review the above Remarks, the Commissioner or his representative is respectfully requested to telephone the undersigned patent attorney in order to resolve these matters and avoid the issuance of another Official Action.

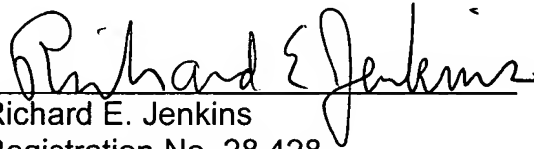
Although it is believed that no fee is due, the Commissioner is hereby authorized to charge any fees associated with the filing of this correspondence to Deposit Account No. 50-0426.

Respectfully submitted,

JENKINS, WILSON, TAYLOR & HUNT, P.A.

Date: March 17, 2008

By:

  
Richard E. Jenkins

Registration No. 28,428

Customer No: 25297

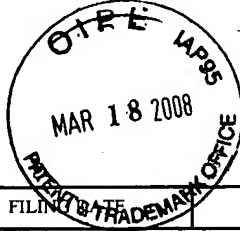
REJ/DMS/gwc

421/75/2

Enclosures: Exhibits A - D



# UNITED STATES PATENT AND TRADEMARK OFFICE



## COPY

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,370	09/25/2003	Laurence E. Dahners	421/75/2	3033

25297 7590 02/13/2008  
JENKINS, WILSON, TAYLOR & HUNT, P. A.  
3100 TOWER BLVD., Suite 1200  
DURHAM, NC 27707

EXAMINER

SWIGER III, JAMES L

ART UNIT PAPER NUMBER

3733

MAIL DATE DELIVERY MODE

02/13/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DOCKET DATES: 3/13; 4/13/08  
ASSIGNED ATTY: REJ/dms  
FILE NO. 421/75/2  
DOCKETED BY: CA3 DATE: 2/19/08

FEB 15 2008



# **Notice of Abandonment**

Application No.

10/672,370

Examiner

JAMES L. SWIGER

Applicant(s)

DAHNNERS, LAURENCE E.

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 13 July 2007.
  - (a) ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b) ☐ A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.  
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c) ☐ A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b) ☐ The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a) ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

/Eduardo C. Robert/  
Supervisory Patent Examiner, Art Unit 3733

/JAMES L SWIGER/  
Examiner, Art Unit 3733

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.